IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 293 of 1998.

Judgement reserved on: 1.5.2007.

Date of decision: 7.5.2007 .

Parveen Soap Factory & anr. ….. **Appellants.**

Vs.

Punjab National Bank …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr. R.K.Gautam, Sr. Advocate with Mr. Jagannath, Advocate.**

For the Respondent : **Mr. Inder Vaidya vice Mr. Ravi Bakshi, Advocate.**

Kuldip Singh, Judge.

The defendants-appellants are in appeal against judgement and decree dated 20.8.1998, passed by the learned District Judge, Solan camp court at Nalagarh, H.P. in Civil Suit No. 18-NL/1 of 1995 decreeing the suit of the plaintiff- respondent for Rs. 3,75,911.50 P. with costs against both the defendants jointly and severally alongwith future interest at the rate of 14% per annum from the date of the suit till payment. In case the payment is not made within six months from the date of the decree, then plaintiff shall be entitled to recover the decretal amount from the mortgaged property of defendant vide document No. 156 dated 4.5.1989 in respect of land and building, comprised in khewat Khatauni No. 30/53-54-55

Whether the reporters of the local papers may be allowed to see the Judgment?

vide jamabandi for the year 1982-83, Village Sansiwala, Tehsil Kasauli, District Solan. For convenience, the parties are referred in the same manner as in the court below.

2. The facts as disclosed in the plaint are that on 14.8.1987, cash credit (Hypothecation) limit of Rs. 50,000/- was taken by defendant No.1 from plaintiff, as per agreement of hypothecation. Defendant No.1 agreed to pay the amount with 13% interest per annum calculated on daily balance. Defendant No.2 stood guarantor for repayment of cash credit limit of defendant No.1 and executed deed of guarantee on 14.8.1987. The defendant No.2 mortgaged his immovable property through registered mortgage-deed dated 25.7.1987 qua his land and building comprised in khasra No. 12 min, kitas 3 measuring 22-8 Bighas. This limit was got enhanced by defendant No.1 to Rs. 1,00,000/- and agreement of hypothecation dated 1.2.1988 was executed by defendant No.1 with plaintiff, who agreed to pay the amount with 13% interest per annum with quarterly rests. The defendant No.2 executed guarantee deed 1.2.1988. The loan limit of Rs. 1,00,000/- was enhanced to Rs. 2,00,000/- on the request of defendant No.1, who executed agreement of hypothecation dated 15.5.1989 and agreed to pay the loan amount with interest at the rate 14% per annum with quarterly rests. The defendant No.2 stood guarantor to repay the enhanced amount and executed deed of guarantee dated 15.5.1989 when defendant No.1 applied for enhancement of loan from Rs. 50,000/- to Rs. 1,00,000/-. Defendant No.2 executed another mortgage deed dated 15.1.1988 qua his land and building comprised in khasra No.12 min, kitas 3

measuring 22-8 Bighas. After enhancement of cash credit limit of Rs. 2,00,000/-, the defendant No.2 vide registered deed dated 4.5.1989 mortgaged his property in favour of plaintiff. The defendant No.1 on 20.4.1990, 10.4.1992, 17.11.1992, 11.1.1993 and 12.4.1994 signed balance confirmation letters and thus acknowledged the liability. The account of the defendants became sticky, therefore, the account was transferred to protest account on 9.11.1994. On that date Rs. 3,64,838/- was due from defendants. The defendants failed to regularize the account despite demands, hence suit was filed by the plaintiff for recovery of Rs. 3,75,911.50 alongwith future interest at the rate of 18.25% per annum with quarterly rests, passing of preliminary decree and final decree for sale of mortgaged property for recovery of decretal amount, sale of hypothecated goods, in case the sale proceeds of the mortgaged property and hypothecated property are not sufficient to satisfy the decree, the plaintiff be permitted to recover balance amount from other properties of defendants.

3. Defendant No.1 filed a written statement and admitted that he applied for cash credit limit of Rs. 50,000/-. He was told that limit was to be sanctioned by Regional Office of the plaintiff. The defendant No.1 was never apprised about the sanction. It has been denied that rate of interest was 13% per annum with quarterly rests, but according to defendant No.1 interest at the rate of 10% per annum was payable. It has not been denied that defendant No.2 was guarantor and property was mortgaged but it has been submitted that interest was at the rate of 10% per annum. It has not been denied that limit was enhanced to Rs.1,00,000/-, but rate of interest remained

10% per annum with half yearly rests. The execution of guarantee deed by defendant No. 2 was not disputed. It has been denied that the limit was enhanced to Rs.2,00,000/-. The balance confirmation letters were denied on the ground that the signatures of defendant No.1 were taken on blank papers in the year 1990. The entitlement of the plaintiff for suit amount was denied. The learned District Judge decreed the suit, as noticed above, and in this way the defendants filed the appeal in this court.

4. I have heard the learned counsel for the parties and have also gone through the record.

5. The learned counsel for the appellants- defendants has submitted that the impugned judgement and decree are against the facts as well as law applicable in the present case. The suit was not filed by duly authorized person. Proper issues were not framed. Issue No.2, pertaining to rate of interest has been wrongly decided. The learned counsel appearing vice counsel for respondent-plaintiff has supported the impugned judgement and decree and has submitted that the impugned judgement and decree have been passed in accordance with the proved facts on record.

6. The plaintiff has examined PW 1 Rajiv Raizada, Senior Manager, who has proved that on 14.8.1987 cash credit limit worth Rs. 50,000/- was sanctioned in favour of defendant No.1, which was later on enhanced to Rs. 1,00,000/- on 1.2.1988. Thereafter loan of Rs. 1,00,000/- was given on 15.5.1989. He has proved hypothecation deed Ex. PA, guarantee deed Ex. PB, mortgage deed Ex.PC. He has stated that on 6.1.1995 Rs. 3,75,411.50 was due to the plaintiff from

defendants. PW 2 Subhash Gupta, Manager has stated that on 10.4.1992, the defendants acknowledged the liability, vide writing Ex. PD. PW 3 Harbinder Singh, another Manager proved the statement of account Ex. PW 3/A. PW 4 Deepak Kapoor has proved the opening of account by defendant No.1 with plaintiff, vide application Ex. PW 4/A, and enhancement of limit of defendant No. 1, vide application Ex. PW 4/C. PW 5 Ram Rattan has proved Ex. PW 5/A and Ex. PW 5/B. DW 1 Parveen Sharma has admitted application for granting loan on 14.8.1987. In his statement, he has not specifically denied the actual amount sanctioned by the plaintiff and consequently taken by him, as claimed by the plaintiff. Though he has stated that the amount claimed by the plaintiff is not due from him.

7. The enhancement of limit from Rs. 1,00,000/- to Rs. 2,00,000/- for which defendant No.1 had executed agreement of hypothecation Ex. PA. and defendant No.2 Kishori Lal executed deed of guarantee Ex. PB. The defendant No.2 mortgaged his property, vide Ex. PC. The defendant No.1 has acknowledged Rs. 2,06,532.10 payable on 20.4.1990 vide Ex. PW 4/C, Rs. 2,30,941.22 payable on 10.4.1992 vide Ex. PD, Rs. 2,39,675.57 payable on 11.1.1993 vide Ex. PW 5/B.

8. Learned counsel for the appellants- defendants has failed to make out any case that the impugned judgement and decree are against the facts and law applicable in the case. There is no substance in the submission of the learned counsel for the appellants- defendants that the suit has not been filed by authorized person on behalf of the Bank. The parties were aware of the

controversy and the core question involved in the suit. Therefore, the plea of the learned counsel for the appellants- defendants that proper issues were not framed, has no substance. It is well settled that non-framing of an issue is not material, if the parties are aware of the controversy and no prejudice has been caused to any of the parties by non-framing of the issues. It is not the case of appellants-defendants that they were not aware of the real controversy between the parties and non-framing of the issues has caused any prejudice to them. The defendants during the trial did not raise this grievance. It is thus clear that the point of non-framing of the issues has been taken by the defendants as an afterthought in the appeal. It has not been shown how the suit has not been filed by authorized person. Similarly the rate of interest awarded by the learned District Judge has also not been shown how it is wrong.

9. The court below has rightly appreciated the pleadings and evidence on record. The defendants have failed to make out any case of interference.

10. No other point was urged.

11. In views of above discussion, the appeal is dismissed with costs. The impugned judgement and decree are confirmed.

May 7 , 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**